

District Court, Boulder County, Colorado Court Address: 1776 6 th Avenue Boulder, CO 80306	
THE PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant.	DATE FILED: April 26, 2024 4:00 PM σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender Kathryn Herold #40075 Supervising Deputy State Public Defender Samuel Dunn #46901 Deputy State Public Defender Boulder Regional Public Defenders 2555 55TH Street D-200, Boulder, CO 80301 Phone: (303) 444-2322 Fax: (303) 449-6432 E-mail: boulder.defenders@state.co.us	Case No. 21CR497 Division 13
<p align="center">MR. ALISSA’S MOTION FOR A FAIR AND IMPARTIAL JURY TRIAL – INCLUSION OF UNCONSCIOUS BIAS JUROR VIDEO PRIOR TO JURY SELECTION (D-046)</p>	

AHMAD ALISSA, by and through counsel, respectfully moves this Court to require any potential jurors to watch an unconscious bias video prior to jury selection. In support of this motion, Mr. Alissa states the following:

1. Mr. Alissa is charged with one hundred and fifteen counts. Those charges include ten counts of first degree murder. If convicted at trial, the Court must sentence Mr. Alissa to life in prison without the possibility of parole. The government is seeking to send Mr. Alissa to prison for the rest of his life.
2. Mr. Alissa is of Syrian descent. He is accused of killing ten white people, including a white police officer. Mr. Alissa’s family were all living with Mr. Alissa at the time of the shooting. Many of Mr. Alissa’s family members will be testifying at trial. Law enforcement investigated Mr. Alissa as a potential terrorist and the federal government was initially going to prosecute this case because of that belief.
3. “[I]t is plain that there is a risk of racial prejudice influencing a jury whenever there is a crime involving interracial violence.” *See Turner v. Murray*, 476 U.S. 28, 36 n.8 (1986).
4. In Colorado, there is no doubt that racial bias is alive and well. *See, e.g., Pena- Rodriguez v. Colorado*, 137 S. Ct. 855 (2017); Evan Ochsner, *Colorado Governor Name Special Prosecutor to Investigate Death of Elijah McClain*, Colorado Sun (June 25, 2020, 3:33PM MDT) [https://coloradosun.com/2020/06/25/elijah-mcclain-death-special-prosecutor- appointed/](https://coloradosun.com/2020/06/25/elijah-mcclain-death-special-prosecutor-appointed/); *see also Valdez v. People*, 966 P.2d 587, 595 (Colo. 1998) (where a Denver County prosecutor improperly suggested that a certain cognizable racial group of jurors, *i.e.*, African Americans,

“would be unable to be impartial”); Debra Cassens Weiss, *Judge resigns after demeaning email reference to colleague leads to removal recommendation*, <https://www.abajournal.com/news/article/colorado-judge-resigns-after-demeaning-email-reference-to-colleague-leads-to-removal-recommendation> (detailing the disciplinary proceedings and resignation of Colorado Court of Appeals Judge Laurie Booras resulting from her racist references to a Native American person as “the squaw” and to a Latina woman as the “little Mexican”); Stephanie Hindson et. al., *Race, Gender, Region and Death Sentencing in Colorado, 1980-1999*, 77 U. Colo. L. Rev. 549, 581 (2006) (finding that in Colorado, prosecutorial decisions to seek death sentences significantly vary across the state and are strongly correlated with the race, ethnicity, and gender of the homicide victim).

5. Juror bias is “the existence of a state of mind that leads to an inference that the [juror] will not act with impartiality.” *United States v. Torres*, 128 F.3d 38, 43 (2d Cir. 1997).
6. Often, juror bias is implicit, a product of “the plethora of fears, feelings, perceptions, and stereotypes that lie deep within our subconscious, without our conscious permission or acknowledgement.” Judge Mark W. Bennett, “*Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions*,” 4 HARVARD LAW & POLICY REVIEW 149 (2010).
7. Implicit biases are “much more difficult to ascertain, measure and study than explicit biases.” Bennett, *supra* at 152. Nonetheless, they are “pervasive and powerful” influences in people’s decision-making processes. *Id.*
8. Based on years of research, Project Implicit¹ has made four general findings about implicit bias:
 - *Implicit biases are pervasive among Americans*
 - *People are often unaware of their implicit biases*
 - *Implicit biases predict behavior*
 - *People differ in levels of implicit bias*
9. “[I]hese general findings show that virtually none of us, despite our best efforts, is free from implicit bias.” Bennett, *supra* at 154.
10. Educating jurors on implicit bias is critical to further elimination of bias in the courtroom and to ensure that Mr. Alissa receives a fair trial.
11. “Implicit bias may be seen in the jury deliberation process because jurors may harbor stereotypes and not realize they are employing them towards witnesses or defendants.” Anona Su, *A Proposal to Properly Address Implicit Bias in the Jury*, 31 Hastings Women’s L.J. 79 (2020).
12. Studies surrounding implicit bias reveal priming jurors to think about implicit bias before the trial gives them the opportunity to process the information they receive. *Id.*; *See also*, Heather M. Claypool, Kurt Hugenberg & Jennifer Miller, “*Categorization and Individuation in the Cross-Race*

¹ “Project Implicit was originally launched at Yale University as a demonstration website in 1998. With a grant from the National Institute of Mental Health in 2003, it then operated as a research and virtual laboratory. Project Implicit is now a collaborative effort among research scientists, technicians, and laboratories at Harvard University, the University of Virginia, and the University of Washington.” Bennett, *supra* at 152. *See also* Project Implicit, What is Project Implicit?, <http://www.projectimplicit.net/about/php>

Recognition Deficit: Toward a Solution to an Insidious Problem, 43 J. Experimental Soc. Psych. 334 (2007).

13. Jurisdictions around the country are recognizing the need to address implicit bias with jurors. At the forefront is Washington State who has implemented a comprehensive program that all courts in the state must apply. *See* Wash. Rev. Code Ann. § GR 37 (West 2018).
14. There is a greater understanding for the need to address implicit bias with jurors from the beginning of trial. Implicit bias is something everyone suffers from, regardless of race. In order to acknowledge implicit bias and make it on the forefront of every jurors mind the United States District Court, Western District Court of Washington has released a video on the topic of unconscious bias. *See* Western Wash. Dist. Ct. *Unconscious Bias*, YOUTUBE (Mar. 31, 2017), <https://www.youtube.com/watch?v=hdjBbfdRLkA>.
15. Mr. Alissa is requesting a similar video to educate potential jurors of their implicit bias.
16. Mr. Alissa requests a hearing on this motion.

Mr. Alissa makes these arguments and motions, and all motions and objections in this case, whether or not expressly stated at the time of the motion or objection, under the Due Process, Trial by Jury, Right to Counsel, Confrontation, Compulsory Process, Equal Protection Cruel and Unusual Punishment and Privilege Against Self Incrimination Clauses of the federal and Colorado Constitutions, and the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution, and Art. II, §§ 3,6,7,8,16,18,20,23 and 25 of Colorado's Constitution.

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Certificate of Service

I hereby certify that on ___April
26_____, 2024, I served the foregoing
document through Colorado E filing to all
opposing counsel of record.

KH

Dated: April 24, 2024

